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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,731	09/30/2003	Raymond R. Price	R15-004-02-US	3975

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EXAMINER
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HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,731

Applicant(s)

PRICE ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/14/05</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

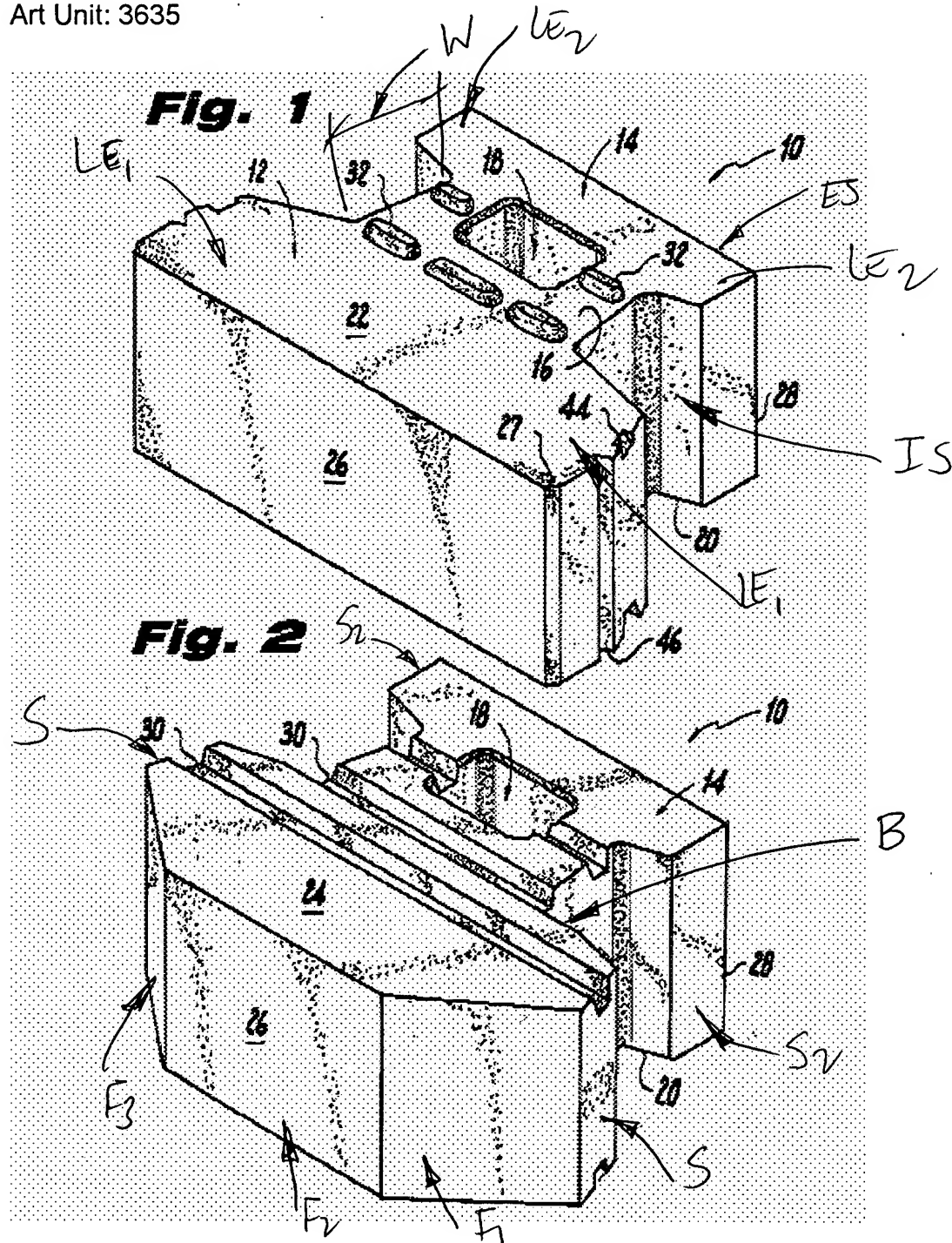
***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-34 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,951,210 to MAGUIRE et al. Regarding claims 1,2,10 and 23, MAGUIRE et al. discloses the use of a preformed horizontally elongate block (10) including a front (26), a rear (28), first and second sides (S), see the marked figure below, a top (22) and a bottom (24); the front (26) of the block comprising a viewable surface and a back surface (B), see the marked figure below; a projection (32) extending outwardly from the block top (22); and the



block (10) defining a recess (30) at the bottom (24) from the location of the projection, the recess (30) extending transversely and continuously across the block, the recess (30) comprising a stop surface (the sides of the channel) that is coplanar with the back surface of the front, wherein the recess (30) of the horizontally elongated block permits

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the projection (32) of a second block (10) to engage the back surface (B) of the front (26) of the horizontally elongated block (10). In reference to claim 2, the front (26) and rear (28) portions of MAGUIRE et al. further includes lateral extents (LE1) and (LE2); respectively, see the marked attachment above. The front (26) and rear members (28) are connected by a web (W), see also the marked figure above, wherein the recess (30) extends transversely across the bottom (24); and the rear portion (28) includes an interior surface (IS), an exterior surface (ES), and sides (S2), see the marked attachment above. Regarding claims 3,6,13,16,25 and 28, the projection (32) comprises an indexing surface (the sides of the projection) and the recess (30) comprises a stop surface (the bottom of the recess), with the indexing and stop surfaces of the blocks in vertical alignment with each other, figure 6, and with the indexing and stop surfaces serving to position the block in one course in a predetermined relation with another block (10) in an adjacent course as the indexing and stop surfaces of adjacent courses of blocks (10) are brought into registry with each other. In reference to claims 4,5,14,15,26,27 and 31, the indexing and stop surfaces are offset by a first predetermined distance (the distance between the rear surface (B) of the front (26) and interior (IS) of the back (28)) and by a plurality of predetermined distances (the first predetermined distance on both sides of the block). Regarding claim 7,17, and 29 the predetermined relation is coplanar when the blocks (10) are arranged in a straight configuration. In reference to claim 8,18, and 30 the predetermined configuration is offset when the blocks (10) form an arcuate configuration. Further regarding claim 10, when the blocks (10) are stacked one upon the other, see figures 5 and 6, the stop (the

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bottom of the recess) and recess (32) are coplanar. In reference to claims 11,12,33 and 34, as shown in figures 5 and 6, when the blocks (10) are stacked one upon the other, they are positioned directly over an underlying block (10) and once the blocks, stacked one upon the other are moved to form an arcuate configuration, the blocks overlap the joint formed between adjacent blocks (10). Regarding claim 19, the predetermined relation can be one of a plurality of distances especially when forming an arcuate configuration. In reference to claim 21, as detailed above, the blocks have the same longitudinal extent (LE1) or (LE2) on either side thereof. Regarding claim 22, the front surface (26) includes a plurality of facets (F1-3), see the above attachment. In reference to claim 24, the block (10) includes a bottom support surface (24) wherein the projection (32) extends downwardly away and towards the bottom surface (24) and the top (22) provides a top support surface such that the recess (30) extends downwardly relative to the top surface (22).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 20 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,951,210 to MAGUIRE et al. MAGUIRE et al. discloses the basic claimed retaining wall except for The blocks having different thickness. Although MAGUIRE et al. does not disclose the blocks having varying thickness, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the thickness of the blocks suitable for the use intended as an obvious matter of design choice. For instance blocks having varied thickness present a more aesthetic appearance and would be very pleasing when used for homes or business; whereas, the varied thickness design might not be needed if the blocks are used as a retaining wall simply to distinguish between property lines.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton  
Examiner  
Art Unit 3635  
6/14/05